CF0000064282

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR:M.P.

Criminal Appeal No.2213 of 2000.

APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE

APPELLANT: Bandhan, S/o Biphaiya Nagetia
aged about 30 years, R/o Champa Nagar,
P.S. Kusmi, Distt. Sarguja,(M.P.).

Vs.

RESPONDENTS: The State of M.P. through:
P.S. Thana Prabhari,
Thana-Balrampur, Distt. Sarguja,(MP).

The appellant named above begs to submit as under :-

XI-HC-78

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CRA...2213 **सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB:- Hon'ble Shri L.C. Bhadoo, Ag. C.J. &

Hon'ble Shri Sunil Kumar Sinha, J.

7-2-2007:-

Miss Sofia Khan, counsel for the appellant.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, Ag. C.J.

The accused/appellant is not able to furnish bail bonds, therefore, appeal is heard finally.

This appeal is directed against the judgment of conviction and order of sentence dated 30th June 2000 passed by the Sessions Judge, Surguja in S.T. No.390/98 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC, sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for 6 months.

Case of the prosecution is that on the fateful day accused Bandhan was at the residence of his maternal uncle Dhemna. Deceased Somari was also there, as she was called by the wife of Dhemna. When the accused and the deceased were talking, accused asked Somari that she is hag (Dian) which was objected by the deceased. However, the accused was repeatedly saying that she is hag, whereas the deceased was repeatedly objecting the same. In that process, the accused picked up a stick, attacked Somari Bai with the stick, when that stick was broken, he picked up a Geda (wooden club) and attacked Somari with that on her head. Bifni and her daughter Purni asked the accused not to assault Somari, but the accused did not stop, on which she tried to intervene, the accused threatened them

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आदेश पत्रक (पूर्वानुबद्ध)

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also, as a result of the assault made by the accused Somari fell down and succumbed to the injuries. Son of the deceased Magdha was informed by his wife on his return from the market. Receiving information, he reached place of occurrence and saw the body of his mother in the house of Dhemna. On 9-10-98, the matter was reported by Magdha to Police Station Balrampur under Ex.-P/1. Station House Officer P.S. Balrampur Mr. A.K. Tiwari (PW-6) registered the crime, left for scene of occurrence, after giving notice to the Panchas, prepared inquest (Ex.-P/4) on the body of deceased Somari. The dead body of Somari was sent under Ex.-P/10 for postmortem to the Primary Health Centre, Ramanujganj where Dr. B.R. Sharma conducted postmortem, prepared postmortem report (Ex.-P/2) and opined that cause of death was shock due to massive haemorrhage from Injury No.2 over skull and death was homicidal.

After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Ramanujganj, who in turn committed the case to the Sessions Judge, Surguja where the prosecution in order to establish the charge against the accused examined 6 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence. Learned Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed homicidal death of Somari. Moreover, eyewitnesses namely, PW-2 Bifni Bai and PW-4 Purni Bai have stated that the accused attacked Somari with wooden club (Geda), as a result of which Somari sustained injuries on the head. PW-3 Dr. B.R.

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आदेश पत्रक (पूर्वानुबद्ध)

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Sharma has stated that on 10/10/98 he conducted postmortem on the body of Somari. He noticed that following injuries were found on the body of Somari:-

(1) Lacerated wound over right side of forehead above eyebrow in the size of 3 cm x 1 cm x ½ cm. There was swelling around the injury.

(2) Lacerated wound in the size of 5 cm x 6 cm over left side of skull above pinna (ear) deep up to brain matter. The bone was fractured, on account of fracture of bone brain matter was visible. Right temporal and parietal bones were fractured. Injuries were ante-mortem in nature. Death was homicidal in nature.

In view of the above, it is established that the death of Somari was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-2 Bifni Bai has stated that on the fateful day she saw that the accused attacked the deceased with wooden club (Geda) thrice on her head. When she tried to intervene, the accused threatened her also. In cross-examination, she has categorically stated that she saw the accused assaulting the deceased that is why she tried to intervene. The evidence of this witness is corroborated by the evidence of PW-4 Purni Bai, daughter of Bifni. She has stated that the accused attacked the deceased with wooden club (Geda). In cross-examination of these witnesses, defence has not been able to elicit any circumstance to discredit the evidence of these witnesses. Moreover, Geda (wooden club) was taken into possession from the place of occurrence, therefore, involvement of the accused/appellant has been established by the ocular evidence.

Learned counsel for the accused/appellant argued that in a sudden quarrel the accused attacked the deceased with wooden club on her head, therefore, he

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आदेश पत्रक (पूर्वानुबद्ध)

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had no intention to cause death of the deceased. Hence, offence against the accused does not travel beyond Section 304 Part-II of the IPC.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate argument advanced by learned counsel for the appellant, we have perused evidence of PW-2 Bifni Bai, eyewitness. She has stated that the accused attacked the deceased thrice. When she tried to intervene, he threatened her also. PW-3 Dr. B.R. Sharma, who conducted postmortem, has stated that there was lacerated wound on the right side of forehead, there was another lacerated wound on the right side of head, as a result of which both temporal and parietal bones were fractured. Brain matter was visible from the place where bone was fractured. He has further stated that injury No.2 was fatal. Injury No.2 was sufficient in the ordinary course of nature to cause death. His report is Ex.-P/2.

If we look into seizure memo of weapon of offence i.e. Geda (wooden club), it appears that wooden club was 3 feet in length having circumference of 9" of one side and 8" of other side. As per the settled law, intention of the accused can be gathered from the weapon used, size of the weapon, the background facts leading to the assault, part of the body where blow was given. In the light of above principle, facts of the present case disclose that the accused assaulted the deceased with wooden club which was 3 feet in length having circumference of 9" of one side and 8" of other side, on the right side of head, as a result of which both temporal and parietal bones were fractured, brain matter was visible through facture of skull bone. The accused gave repeated blows, therefore, intention of the accused to cause death of the deceased was writ large. The background of crime was that the accused attacked the deceased on the ground that she is hag

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(Dian), which was objected by the deceased, but the accused continued to repeat, which was objected by the deceased, thereafter, the accused picked up Lathi and assaulted the deceased, when Lathi was broken, he picked up Geda (wooden club) and attacked the deceased. This act of the accused is suggestive of the fact that the accused attacked the deceased with intention to finish her.

In view of the above, we are of the considered opinion that there is no merit in this appeal, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Barve